

Honorable James L. Robart

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

DECKERS OUTDOOR CORPORATION,

Case No. 2:23-cv-01842-JLR

Plaintiff,

STIPULATED PROTECTIVE ORDER

SEATTLE PACIFIC INDUSTRIES, INC.; VIDA
SHOES INTERNATIONAL, INC.; and DOES 1-
10, inclusive.

Defendants.

Plaintiff Deckers Outdoor Corporation (“Plaintiff”) and Defendants Seattle Pacific Industries, Inc. and Vida Shoes International, Inc. (“Defendants”) hereby stipulate to and petition the Court to enter the following Protective Order.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on

1 all disclosures or responses to discovery, the protection it affords from public
 2 disclosure and use extends only to the limited information or items that are
 3 entitled to confidential treatment under the applicable legal principles, and it
 4 does not presumptively entitle parties to file confidential information under seal.

5 **2. "CONFIDENTIAL" OR "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

6 **MATERIAL**

7 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" material shall
 8 include the following documents and tangible things produced or otherwise
 9 exchanged that the party from whom discovery is sought ("Designating Party" or
 10 "Producing Party"), in good faith, reasonably believes: (a) contains trade secrets
 11 as defined in RCW 19.108.010(4); (b) is protected by a right to privacy under
 12 federal or state law or any other applicable privilege or right related to
 13 confidentiality or privacy; (c) is otherwise entitled to protection under the Local
 14 Civil Rules for the United States District Court for the Western District of
 15 Washington. A document or tangible thing shall not be considered "Confidential"
 16 or "Highly Confidential – Attorneys' Eyes Only" Material if it:

- 17 (a) is a compilation of information, or is itself a document or tangible thing,
 that is or was publicly available at any time before disclosure;
- 18 (b) becomes publicly available after disclosure through no fault of the
 Receiving Party;
- 19 (c) was known to the Receiving Party prior to disclosure; or
- 20 (d) the Receiving Party lawfully receives it at a later date from a non-party
 without restriction as to disclosure.

21 **3. SCOPE**

22 The protections conferred by this agreement cover not only Confidential or
 23 Highly Confidential – Attorneys' Eyes Only Material (as defined above), but also
 24 (1) any information copied or extracted from Confidential or Highly Confidential –
 25 Attorneys' Eyes Only Material; (2) all copies, excerpts, summaries, or compilations

1 of confidential or Highly Confidential – Attorneys’ Eyes Only Material; and (3) any
2 testimony, conversations, or presentations by parties or their counsel that might
3 reveal Confidential or Highly Confidential – Attorneys’ Eyes Only Material.

4 However, the protections conferred by this agreement do not cover
5 information that is in the public domain or becomes part of the public domain
6 through trial or otherwise.

7 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

8 4.1 Basic Principles. A Receiving Party may use Confidential or Highly
9 Confidential – Attorneys’ Eyes Only Material that is disclosed or produced by
10 another party or by a non-party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Confidential or Highly
12 Confidential – Attorneys’ Eyes Only Material may be disclosed only to the
13 categories of persons and under the conditions described in this agreement.
14 Confidential or Highly Confidential – Attorneys’ Eyes Only Material must be stored
15 and maintained by a Receiving Party at a location and in a secure manner that
16 ensures that access is limited to the persons authorized under this agreement.

17 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving
19 Party may disclose any Confidential Material only to:

- 20 (a) the Receiving Party’s outside counsel of record, as well as their support
21 staff, employees and/or contractors to whom it is reasonably necessary
22 to disclose the information for this litigation;
- 23 (b) the officers, directors, and employees (including in-house counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this
25 litigation;
- 26 (c) experts, translators, and consultants to whom disclosure is reasonably
27 necessary for this litigation and who have signed the “Acknowledgment
28 and Agreement to Be Bound” (Exhibit A);

- 1 (d) the Court, court personnel, court reporters and their staff;
- 2 (e) copy, eDiscovery, or imaging services retained by counsel to assist in
- 3 the duplication of Confidential Material, provided that counsel for the
- 4 party retaining the copy or imaging service instructs the service not to
- 5 disclose any Confidential Material to third parties and to immediately
- 6 return all originals and copies of any Confidential Material;
- 7 (f) during their depositions, witnesses in this action to whom disclosure is
- 8 reasonably necessary and who have signed the "Acknowledgement and
- 9 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
- 10 Designating Party or ordered by the court. If a deposition transcript
- 11 contains an exhibit marked Confidential pursuant to this Protective
- 12 Order or contains testimony designated as Confidential pursuant to
- 13 Section 4.2(b), the front page of the deposition shall include the
- 14 disclaimer 'Contains Confidential Material subject to Protective Order';
- 15 (g) the author or recipient of a document containing the information or a
- 16 custodian or other person reasonably appearing to have prepared,
- 17 received, reviewed, or otherwise been provided access to the
- 18 Confidential Material prior to disclosure to such person pursuant to this
- 19 sub-paragraph; and
- 20 (h) vendors retained by or for the parties to assist in preparing for pretrial
- 21 discovery, trial and/or hearings including, but not limited to, court
- 22 reporters, litigation support personnel, jury consultants, individuals to
- 23 prepare demonstrative and audiovisual aids for use in the courtroom or
- 24 in depositions or mock jury sessions, as well as their staff, stenographic,
- 25 and clerical employees whose duties and responsibilities require access
- 26 to such materials.

27 4.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

28 Information or Items. Unless otherwise ordered by the court or permitted in

1 writing by the Designating Party, a Receiving Party may disclose any Highly
2 Confidential – Attorneys’ Eyes Only Material only to:

- 3 (a) the Receiving Party’s outside counsel of record, as well as their support
4 staff, employees and/or contractors to whom it is reasonably necessary
5 to disclose the information for this litigation;
- 6 (b) experts, translators, and consultants to whom disclosure is reasonably
7 necessary for this litigation and who have signed the “Acknowledgment
8 and Agreement to Be Bound” (Exhibit A);
- 9 (c) the Court, court personnel, court reporters and their staff;
- 10 (d) copy, eDiscovery, or imaging services retained by counsel to assist in
11 the duplication of Highly Confidential – Attorneys Eyes Only Material,
12 provided that counsel for the party retaining the copy or imaging
13 service instructs the service not to disclose any Highly Confidential –
14 Attorneys Eyes Only Material to third parties and to immediately return
15 all originals and copies of any Highly Confidential – Attorneys Eyes Only
16 Material;
- 17 (e) the author or recipient of a document containing the information or a
18 custodian or other person reasonably appearing to have prepared,
19 received, reviewed, or otherwise been provided access to the Highly
20 Confidential – Attorneys Eyes Only Material prior to disclosure to such
21 person pursuant to this sub-paragraph; and
- 22 (f) vendors retained by or for the parties to assist in preparing for pretrial
23 discovery, trial and/or hearings including, but not limited to, court
24 reporters, litigation support personnel, jury consultants, individuals to
25 prepare demonstrative and audiovisual aids for use in the courtroom or
26 in depositions or mock jury sessions, as well as their staff, stenographic,
27 and clerical employees whose duties and responsibilities require access
28 to such materials.

1 4.4 Filing Confidential or Highly Confidential – Attorneys’ Eyes Only

2 Material. Before filing Confidential or Highly Confidential – Attorneys Eyes Only

3 Material or discussing or referencing such material in court filings, the filing party

4 shall confer with the Designating Party, in accordance with Local Civil Rule

5 5(g)(3)(A), to determine whether the Designating Party will remove the

6 Confidential or Highly Confidential – Attorneys’ Eyes Only designation, whether

7 the document can be redacted, or whether a motion to seal or stipulation and

8 proposed order is warranted. During the meet and confer process, the

9 Designating Party must identify the basis for sealing the specific confidential

10 information at issue, and the filing party shall include this basis in its motion to

11 seal, along with any objection to sealing the information at issue. Local Civil Rule

12 5(g) sets forth the procedures that must be followed and the standards that will

13 be applied when a party seeks permission from the court to file material under

14 seal. A party who seeks to maintain the confidentiality of its information must

15 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party

16 filing the motion to seal. Failure to satisfy this requirement will result in the

17 motion to seal being denied, in accordance with the strong presumption of public

18 access to the Court’s files.

19 **5. DESIGNATING PROTECTED MATERIAL**

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each party or non-party that designates information or items for protection under

22 this agreement must take care to limit any such designation to specific material

23 that qualifies under the appropriate standards. The Designating Party must

24 designate for protection only those parts of material, documents, items, or oral or

25 written communications that qualify, so that other portions of the material,

26 documents, items, or communications for which protection is not warranted are

27 not swept unjustifiably within the ambit of this agreement.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
 2 that are shown to be clearly unjustified or that have been made for an improper
 3 purpose (e.g., to unnecessarily encumber or delay the case development process
 4 or to impose unnecessary expenses and burdens on other parties) expose the
 5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
 7 designated for protection do not qualify for protection, the Designating Party
 8 must promptly notify all other parties that it is withdrawing the mistaken
 9 designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in
 11 this agreement, or as otherwise stipulated or ordered, disclosure or discovery
 12 material that qualifies for protection under this agreement must be clearly so
 13 designated before or when the material is disclosed or produced.

14 5.3 Information in Documentary Form. (e.g., paper or electronic documents
 15 and deposition exhibits, but excluding transcripts of depositions or other pretrial
 16 or trial proceedings) The Designating Party must affix the word "CONFIDENTIAL"
 17 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
 18 Confidential or Highly Confidential – Attorneys' Eyes Only Material. If only a
 19 portion or portions of the material on a page qualifies for protection, the
 20 Producing Party also must clearly identify the protected portion(s) (e.g., by
 21 making appropriate markings in the margins).

22 (a) Testimony given in deposition or in other pretrial proceedings: the
 23 parties and any participating non-parties must identify on the record,
 24 during the deposition or other pretrial proceeding, all protected
 25 testimony, without prejudice to their right to so designate other
 26 testimony after reviewing the transcript. Any party or non-party may,
 27 within fifteen days after receiving the transcript of the deposition or
 28 other pretrial proceeding, designate portions of the transcript, or

1 exhibits thereto, as confidential. If a party or non-party desires to
 2 protect confidential information at trial, the issue should be addressed
 3 during the pre-trial conference.

4 (b) Other tangible items: the Producing Party must affix in a prominent
 5 place on the exterior of the container or containers in which the
 6 information or item is stored the word “CONFIDENTIAL” or “HIGHLY
 7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions
 8 of the information or item warrant protection, the Producing Party, to
 9 the extent practicable, shall identify the protected portion(s).

10 5.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 11 failure to designate qualified information or items does not, standing alone, waive
 12 the Designating Party’s right to secure protection under this agreement for such
 13 material. Upon timely correction of a designation, the Receiving Party must make
 14 reasonable efforts to ensure that the material is treated in accordance with the
 15 provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
 18 designation of confidentiality at any time. Unless a prompt challenge to a
 19 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
 20 substantial unfairness, unnecessary economic burdens, or a significant disruption
 21 or delay of the litigation, a party does not waive its right to challenge a
 22 confidentiality designation by electing not to mount a challenge promptly after
 23 the original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any
 25 dispute regarding Confidential or Highly Confidential – Attorneys’ Eyes Only
 26 designations without court involvement. Any motion regarding Confidential or
 27 Highly Confidential – Attorneys’ Eyes Only designations or for a protective order
 28 must include a certification, in the motion or in a declaration or affidavit, that the

1 movant has engaged in a good faith meet and confer conference with other
2 affected parties in an effort to resolve the dispute without court action. The
3 certification must list the date, manner, and participants to the conference. A
4 good faith effort to confer requires a face-to-face meeting or a telephone
5 conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the Designating Party may file and serve a motion to retain
8 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
9 5(g), if applicable). The burden of persuasion in any such motion shall be on the
10 Designating Party. Frivolous challenges, and those made for an improper purpose
11 (e.g., to harass or impose unnecessary expenses and burdens on other parties)
12 may expose the challenging party to sanctions. All parties shall continue to
13 maintain the material in question as Confidential or Highly Confidential –
14 Attorneys' Eyes Only until the court rules on the challenge.

15 **7. SUBPOENAS**

16 If a party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information or items designated in this action as
18 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" that party must:

- 19 (a) promptly notify the Designating Party in writing and include a copy of
20 the subpoena or court order;
- 21 (b) promptly notify in writing the party who caused the subpoena or order
22 to issue in the other litigation that some or all of the material covered
23 by the subpoena or order is subject to this agreement. Such notification
24 shall include a copy of this agreement; and
- 25 (c) cooperate with respect to all reasonable procedures sought to be
26 pursued by the Designating Party whose Confidential or Highly
27 Confidential – Attorneys' Eyes Only Material may be affected.

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1 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Confidential or Highly Confidential – Attorneys’ Eyes Only Material to any person
4 or in any circumstance not authorized under this agreement, the Receiving Party
5 must immediately (a) notify in writing the Designating Party of the unauthorized
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
7 protected material, (c) inform the person or persons to whom unauthorized
8 disclosures were made of all the terms of this agreement, and (d) request that
9 such person or persons execute the “Acknowledgment and Agreement to Be
10 Bound” that is attached hereto as Exhibit A.

11 **9. TERMINATION AND RETURN OF DOCUMENTS**

12 Within 60 days after the termination of this action, including all appeals,
13 each Receiving Party must return all Confidential or Highly Confidential –
14 Attorneys’ Eyes Only Material to the Producing Party, including all copies,
15 extracts, and summaries thereof. Alternatively, the parties may agree upon
16 appropriate methods of destruction.

17 Notwithstanding this provision, counsel are entitled to retain one archival
18 copy of all documents filed with the court, trial, deposition, and hearing
19 transcripts, correspondence, deposition and trial exhibits, expert reports,
20 attorney work product, and consultant and expert work product, even if such
21 materials contain Confidential or Highly Confidential – Attorneys’ Eyes Only
22 Material.

23 The confidentiality obligations imposed by this agreement shall remain in
24 effect until a Designating Party agrees otherwise in writing or a court orders
25 otherwise.

26 IT IS SO STIPULATED.

1 Dated: August 5, 2024

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3 Newman LLP

4

5 Seed IP Law Group

6 s/ Jason Sykes

7 Derek Newman, WSBA No. 26967
dn@newmanlaw.com
8 Jason Sykes, WSBA No. 44369
jason@newmanlaw.com
9 1201 Second Avenue, Suite 900
Seattle, WA 98101
Telephone: (206) 274-2800
11 Facsimile: (206) 274-2801

12

13 s/ Kevin Costanza

14 Kevin Costanza, WSBA No. 25153
kevinvo@seedip.com
701 Fifth Avenue, Suite 5400
Seattle, WA 98104
Telephone: (206) 622-4900

15 *Attorneys for Defendant*
Seattle Pacific Industries, Inc. and Vida
Shoes International, Inc.

16 Blakely Law Group

17

18 Kane Kessler, P.C.

19 s/ Brent Blakely

20 Brent Blakely, *pro hac vice*
bblakely@blakelylawgroup.com
21 Jamie Fountain, *pro hac vice*
jfountain@blakelylawgroup.com
1334 Parkview Avenue, Suite 280
Manhattan Beach, CA 90266
Telephone: (310) 546-7400

22 s/ Jonathan M. Sabin

23 Jonathan M. Sabin (*pro hac vice*)
jsabin@kanekessler.com
600 Third Avenue, 35th Floor
New York, NY 10016
Telephone: (212) 541-6222

24 *Attorneys for Defendant*
Vida Shoes International, Inc.

25 *Attorneys for Plaintiff*
Deckers Outdoor Corporation

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production
5 of any documents in this proceeding shall not, for the purposes of this proceeding
6 or any other federal or state proceeding, constitute a waiver by the Producing
7 Party of any privilege applicable to those documents, including the attorney-client
8 privilege, attorney work-product protection, or any other privilege or protection
9 recognized by law.

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11 Dated: August 5, 2024
12



13 Honorable James L. Robart
14 United States District Court Judge
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1 EXHIBIT A
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3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**
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5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare
7 under penalty of perjury that I have read in its entirety and understand the
8 Stipulated Protective Order that was issued by the United States District Court
9 for the Western District of Washington on [date] in the case of
10 _____ [insert formal name of the case and the number and initials
11 assigned to it by the court]. I agree to comply with and to be bound by all the
12 terms of this Stipulated Protective Order and I understand and acknowledge
13 that failure to so comply could expose me to sanctions and punishment in the
14 nature of contempt. I solemnly promise that I will not disclose in any manner
15 any information or item that is subject to this Stipulated Protective Order to any
16 person or entity except in strict compliance with the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District
18 Court for the Western District of Washington for the purpose of enforcing the
19 terms of this Stipulated Protective Order, even if such enforcement proceedings
20 occur after termination of this action.

21 Date: _____
22

23 City and State where sworn and signed: _____, _____
24

25 Printed name: _____
26

27 Signature: _____
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